

1 G9niazzh ag

## HEARING

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

02 Cr. 1446 KMK

6 PAUL AZZARA,

7 Defendant.  
-----x8 September 23, 2016  
9 2:15 p.m.  
White Plains, N.Y.

10 Before:

11 HON. KENNETH M. KARAS,

12 District Judge

## 13 APPEARANCES

14 PREE BHARARA  
15 United States Attorney for the  
Southern District of New York  
16 MAURENE COMEY  
17 MICHAEL MAIMIN  
Assistant United States Attorneys18 STEPHEN LEWIS  
Attorney for Defendant

19 JASON LERMAN, USPO

20  
21  
22 VIOLATION OF SUPERVISED RELEASE  
23  
24  
25

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## HEARING

1 (Defendant not present)

2 THE COURTROOM DEPUTY: United States v. Paul Azzara.

3 02 Cr. 1446. Will counsel please state their appearance.

4 MS COMEY: Maurene Comey and Michael Maimin for the  
5 government.

6 MR. LEWIS: Stephen Lewis for Mr. Azzara.

7 MS COMEY: With us at counsel table is Jason Lerman  
8 from Probation.

9 THE COURT: Good afternoon.

10 MR. LEWIS: I don't know why --

11 THE COURT: That's why we're out here. Please have a  
12 seat. When was the last time you were with Mr. Azzara?

13 MR. LEWIS: Today until around noontime.

14 THE COURT: I think you're aware when he was brought  
15 here this morning there was an issue about clothing.

16 MR. LEWIS: I am aware of that.

17 THE COURT: And my understanding is that your client  
18 did not want to appear for this hearing in the prison issue  
19 clothing.

20 MR. LEWIS: Right.

21 THE COURT: And that he, in fact, tore off the  
22 clothing. I think literally like ripped it.

23 MR. LEWIS: The pants.

24 THE COURT: Yes, the pants. So the marshals have  
25 called up to report that he does not want to appear in his

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undergarments and they were trying to apparently resuscitate the pants that he ripped up. But he's refusing to wear them. There are more serious issues to deal with. I don't want to put your client in a difficult situation. I don't know what solutions you have to suggest to this.

MR. LEWIS: Judge, I met with him while he was in a pair of boxer shorts and a T-shirt which frankly was nothing that was revealing or suggestive. When I left him it was our understanding he was going to appear in court.

THE COURT: He doesn't want to appear that way in court.

MR. LEWIS: May I ask for a five-minute recess to talk to him to verify that information. Because that's different from what we finally had agreed upon.

THE COURT: That's why I came out here knowing he wasn't here. I don't want to do anything substantive in his absence. I was hoping to solicit your help on this.

MR. LEWIS: You know I'm a specialist in getting people to appear in court in their underwear.

THE COURT: I know you're a specialist in a lot of things. I'll give you your five minutes.

MR. LEWIS: I'm going to run downstairs.

(Recess)

THE COURT: Mr. Lewis.

MR. LEWIS: Yes, thank you, your Honor. I think I

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1 need your assistance and intervention. Mr. Johnson, Ed  
2 Johnson, from the Probation Department was kind enough to  
3 indicate that he would look for a pair of pants for me over in  
4 Probation.

5 THE COURT: He's giving me the thumbs up. I guess he  
6 found a pair.

7 MR. LEWIS: However, on the way down in the elevator  
8 with him we were notified that the Marshal's Service is taking  
9 the position that he either wears orange or they're going to  
10 seek a force order to put orange pants on him. And this seems  
11 really silly to me. He can wear a pair of sweatpants. He'll  
12 have ankle bracelets on the entire time he's in court if  
13 they're concerned about him fleeing. All this is doing is  
14 adding gasoline to the fire.

15 THE COURT: Can I get your permission to make a phone  
16 call to the marshals?

17 MR. LEWIS: Of course.

18 THE COURT: Okay with that, government?

19 MS COMEY: Yes. We would defer to the marshals.

20 (Recess)

21 (Proceeding reconvened with the defendant present)

22 MR. LEWIS: Stephen Lewis as CJA counsel for Paul  
23 Azzara who is with me today to my left.

24 THE COURT: Good afternoon to you both. Thank you  
25 again Mr. Lewis, thank you to the Probation Office for

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1 interceding so we're able to resolve the sartorial challenges  
2 of this case. Ready to go forward with witness testimony?  
3 Unless there's any preliminary matters.

4 MR. LEWIS: Before we proceed, Mr. Azzara has asked me  
5 to make two applications to the Court. The first one is that  
6 the petition that is currently filed before your Honor be  
7 dismissed in light of the fact that this Court, in Mr. Azzara's  
8 opinion, does not have jurisdiction because there is no  
9 transfer order that has been entered from the sentencing judge,  
10 Judge~McMahon, to your Honor in this matter. Judge~McMahon is  
11 a sitting justice, she's the chief justice of the Southern  
12 District, she's sitting in the Southern District and she has  
13 heard all of Mr. Azzara's post conviction applications that  
14 have been made. She's ruled on them. And I'm unaware of any  
15 indication that Judge~McMahon has recused herself. And the  
16 concern is that your Honor was cherry-picked for purposes of  
17 this proceeding and that there's been no protocol for purposes  
18 of your Honor's deciding the supervised release application  
19 that's been filed.

20 THE COURT: Who was the agent of the cherry-picking.

21 MR. LEWIS: Mr. Johnson, Mr. Edward Johnson from the  
22 Probation Department.

23 THE COURT: Mr. Johnson assigns cases to judges?

24 MR. LEWIS: Apparently, in the discovery material that  
25 I have, there is a notation specifically that on September 15

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1 that Mr. Jason Lerman received a call from Brian O'Sullivan  
2 from the marshal --

3 MS COMEY: What's the Bates number?

4 MR. LEWIS: 3501-0009. I believe you've been provided  
5 with a book from the government. Middle of the page.

6 MS COMEY: This is 3500 material that was provided for  
7 one of the government's witnesses.

8 THE COURT: What is it?

9 MS COMEY: It's the electronic case file for  
10 Mr. Azzara and it contains statements, written statements by  
11 our first witness, probation officer Lerman.

12 MR. LEWIS: That are reported as part of the business  
13 record of the Department of Probation. And it says that the  
14 marshal, Brian, who I believe to be Brian O'Sullivan, advised  
15 the senior United States Probation Officer Ed Johnson that Ed  
16 Johnson is trying to get United States District Court Judge  
17 Karas assigned to the case. So that's my good-faith basis,  
18 that's Mr. Azzara's good-faith basis for the application that  
19 I'm currently making.

20 THE COURT: Okay. You said there were two  
21 applications.

22 MR. LEWIS: The second application is, was it  
23 yesterday or the day before when we were here?

24 THE COURT: We were here on Tuesday.

25 MR. LEWIS: When we were here on Tuesday, we were

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1 provided with an application for the arrest warrant. Once  
2 again it was from Mr. Johnson. And that particular application  
3 is found at 67 of the discovery materials.

4 MS COMEY: I don't believe you have a copy of the full  
5 discovery. I'm happy to hand up a copy of the document that  
6 defense counsel is referring to.

7 MR. LEWIS: Actually, I think it's 68. And I'll just  
8 read this. It says nature of noncompliance and it says:  
9 Following a sentence by Honorable Colleen McMahon he sent the  
10 letter attached to her chambers at the time in White Plains,  
11 New York which threatened her. Now, that letter that is the  
12 subject of that sentence I have received a copy of and so has  
13 your Honor and there was some discussion about that. It is a  
14 horrible, terrible letter. And your Honor indicated that in  
15 fact you were going to seal it but include it as part of this  
16 record. I'm asking that that not be included and the reason  
17 I'm asking for that is, number one, the government will concede  
18 right now that that letter was never --

19 THE COURT: That was clear on Tuesday.

20 MR. LEWIS: And there truly is an issue, because  
21 Mr. Azzara was never charged with that, the creation of that  
22 letter by the FBI back nine and a half years ago, that that  
23 should be part of this record because it is so prejudicial.  
24 And if there is any appellate review of this, the Second  
25 Circuit, once they look at that, I don't believe they will be

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1 able to divorce themselves from what is in that letter. For  
2 that reason I'm asking that it not be part of the record.

3 THE COURT: A couple of things. First of all, with  
4 respect to jurisdiction, the application is denied. The docket  
5 reflects a reassignment of the case from Judge McMahon to  
6 myself. So I have the case. To be clear, with all due respect  
7 to Mr. Johnson, and I don't know what that note reflects, he  
8 doesn't get to decide who gets assigned cases in the district.  
9 Period. Period. It never happens that way. Just like you  
10 don't, just like Ms Comey doesn't. This was a case that got  
11 reassigned to me from the Chief Judge who also happens to be in  
12 charge of the reassignment committee. Whatever reasons led to  
13 her not being in charge of the case anymore I don't have any  
14 privy over. I don't get to veto what case is assigned to me.  
15 I have the case, assigned to me by the Chief Judge. I don't  
16 know how to explain that note, why Mr. Johnson thinks he can  
17 get me or any other judge assigned to the case, but the answer  
18 is that does not happen.

19 With respect to the letter, as I said, it was pretty  
20 clear to everybody on Tuesday that the letter was not sent, and  
21 that was a mistake. That was in the report. What was  
22 proffered was that the letter was something that was found in  
23 Mr. Azzara's cell. It is signed by somebody purporting to use  
24 that name. And it does talk about Mr. Azzara's case as it  
25 existed before Judge~McMahon. And it was relevant in my view

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1 to the question of bail.

2                  With respect to the prejudice, it's undue prejudice.  
3 And I have more faith in the Second Circuit than I guess  
4 Mr. Azzara does just as I have faith in any judicial officer to  
5 evaluate evidence effectively and decide the relevance of  
6 evidence and the importance of any evidence regardless of how  
7 inflammatory the evidence might or might not be. That's why  
8 that letter needs to be part of the record because in case  
9 there was any review of the Court's decision to remand  
10 Mr. Azzara, anybody reviewing it would need to know what the  
11 basis was of the ruling. To the extent that there are  
12 arguments to be made about the *bona fides* of the letter, those  
13 were not made to me on Tuesday and to the extent there still  
14 could be arguments, that might go to the weight of the evidence  
15 but it doesn't go to it being stricken from the record.

16                  THE DEFENDANT: May I add to the argument please,  
17 because I requested that the application be made.

18                  THE COURT: You have a lawyer who represents you. You  
19 can have him make arguments on your behalf. The reason, I  
20 said -- we talked about this before -- is anything you say can  
21 be recorded and used against you in this or any other  
22 proceeding.

23                  THE DEFENDANT: I'm aware of that. I'd still like to  
24 add to the record please.

25                  MR. LEWIS: Just for the record, it is my advice to

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1 Mr. Azzara that he allow me, if I'm his lawyer, to make all  
2 applications and colloquy with the Court and that he not act  
3 *pro se.*

4 THE COURT: That is sound advice coming from a lawyer  
5 who is quite experienced and quite effective and there really  
6 isn't any downside to having a trained advocate advocate for  
7 you, Mr. Azzara. He's a very capable lawyer. He has tried  
8 cases in front of me. It's really important that you  
9 seriously, seriously consider the advantages to having  
10 Mr. Lewis do his job on your behalf and seriously, seriously  
11 consider the disadvantages to you of speaking in court where  
12 there's a court reporter, the prosecutor and other people here.  
13 Okay. You understand that?

14 THE DEFENDANT: Yes, your Honor. In Azzara v.  
15 Martinez, United States District Court for the Middle District  
16 of Pennsylvania for the Honorable William J. Nealon I filed a  
17 2251 based upon that letter and the failed prosecution. It has  
18 to do with two confidential informants who created the letter,  
19 planted it in my cell and told SIS where that letter could be  
20 found. I did not write that letter. This is all documented in  
21 United States District Court for the Middle District of  
22 Pennsylvania in Azzara v. Martinez, the facts surrounding that  
23 letter. Therefore, to include as part of the record a letter  
24 which I adamantly deny ever drafting and in fact challenged  
25 this eight years ago before I knew of any of these proceedings

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2 is once again highly prejudicial and irrelevant to these  
3 proceedings.

4 THE COURT: Like I said, Mr. Azzara, it doesn't make  
5 the letter irrelevant. It may mean that you think the letter  
6 doesn't --

7 THE DEFENDANT: I --

8 THE COURT: Please do not interrupt me, sir. I have  
9 shown you all the courtesy in the world and I will never  
10 interrupt you and I won't let anybody else interrupt you.

11 THE DEFENDANT: I apologize.

12 THE COURT: All right. The relevance of the document  
13 isn't defined by your view that it wasn't written by you.  
14 Okay. The significance of the letter is something that can  
15 very well be the subject of further discussion. But I have  
16 different versions of the *bona fides* of that letter and my view  
17 is it's relevant. It's not unduly prejudicial and of course if  
18 the moment comes where the letter continues to be relevant and  
19 it's going to be contested you can put forth any letter, have  
20 Mr. Lewis put forth evidence on your behalf. I don't know  
21 anything about the other case. And there's nothing else to be  
22 said on that. I'm not going to strike this from the record.

23 Any other issues, Mr. Lewis?

24 (Counsel consults with his client).

25 MR. LEWIS: Judge, I'm prepared to proceed.

THE COURT: Anything the government wants to take up

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Lerman - direct

1 before we start.

2 MS COMEY: No, your Honor, we're prepared to call our  
3 first witness. Probation officer Jason Lerman.

4 JASON LERMAN,

5 called as a witness by the Government,

6 having been placed under oath, testified as follows:

7 DIRECT EXAMINATION

8 BY MS COMEY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Where do you work?

12 A. United States Probation Office in White Plains.

13 Q. What's your title?

14 A. U.S. probation officer.

15 Q. How long have you been a U.S. probation officer?

16 A. Since January 2016.

17 Q. Where were you employed before that?

18 A. U.S. Pretrial Services.

19 Q. In which district?

20 A. Southern District of New York.

21 Q. For how long were you employed by Pretrial Services?

22 A. 18 years.

23 Q. What was your title there?

24 A. U.S. Pretrial Services Officer.

25 Q. As a probation officer, generally what are your

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Lerman - direct

1 responsibilities?

2 A. I supervise people who are placed on probation and  
3 supervised release.

4 Q. At some point were you assigned to supervise an individual  
5 named Paul Azzara?

6 A. Yes.

7 Q. About when did you receive that assignment?

8 A. That was about July 2016.

9 Q. And when was Mr. Azzara scheduled to be released from  
10 custody?

11 A. September 16, 2016.

12 Q. Prior to September 16, 2016 what was your understanding of  
13 where Mr. Azzara was planning to reside when he was released?

14 A. He was going to reside in Rockland County with his father.

15 MR. LEWIS: Objection. Foundation.

16 THE COURT: What's the basis for that statement,  
17 officer?

18 Q. How did you know that he was going to reside there?

19 A. The Probation Department received a letter from the Bureau  
20 of Prisons asking us to conduct a prerelease investigation and  
21 that was the residence that was given to us.

22 Q. What's a prerelease investigation?

23 MR. LEWIS: Objection. Your Honor, I haven't received  
24 that document as part of the discovery in this case. If such a  
25 document exists, I ask that it be turned over.

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Lerman - direct

1                   THE COURT: Is there a way to get the document?

2 A. Yes.

3                   THE COURT: Can one of your colleagues get it for you?  
4 It looks like the answer is yes. Somebody stood up to get it.

5                   All right, Mr. Lewis, we'll try to get you the  
6 document.

7                   MS COMEY: Would you like me to proceed?

8                   THE COURT: We can proceed.

9 Q. After receiving that document, what process did you go  
10 through?

11 A. Our office goes to the residence to do a home inspection to  
12 make sure it's an appropriate residence.

13 Q. And was that process carried out in this case for  
14 Mr. Azzara?

15 A. Yes, it was.

16 Q. And was that residence approved?

17 A. Yes, it was.

18 Q. Did you speak with Mr. Azzara's father regarding the plan  
19 for his son to reside with him?

20 A. Yes, I did.

21 Q. When was that?

22 A. That was I believe September 8, 2016.

23 Q. What did you discuss?

24 A. We discussed the fact that he was still okay with  
25 Mr. Azzara residing with him at his residence. He said that he

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Lerman - direct

1 was, and that they are still on good terms, and that he was  
2 looking forward to him getting out on the 16th of September.

3 Q. At that point where did you --

4 THE COURT: I believe Mr. Azzara's father is in the  
5 courtroom. Do you anticipate calling him as a witness?

6 MR. LEWIS: No, your Honor.

7 THE COURT: All right.

8 Q. At that point in time, around September 2016, where did you  
9 want Mr. Azzara to report to Probation upon his release?

10 A. To the White Plains office.

11 Q. How did you attempt to communicate that desire that he  
12 report to the White Plains office to the institution where  
13 Mr. Azzara was being held?

14 A. I made a couple of phone calls, attempts to reach out to  
15 his case manager as well as e-mails. Unfortunately, I was not  
16 able to speak with her directly before his release but I spoke  
17 with a manager there by the name of Mr. Page.

18 Q. Just so we're clear, where was Mr. Azzara being held at  
19 this time?

20 A. This was at the MDC in Brooklyn.

21 Q. You mentioned getting in touch with Mr. Page. When was  
22 that?

23 A. That was on the morning of September 16, 2016.

24 Q. Did you actually speak with Mr. Page?

25 A. Yes, I did.

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Lerman - direct

1 Q. What did you learn from Mr. Page about what Mr. Azzara's  
2 plans were for where he was going to go when he was released?

3 MR. LEWIS: Objection.

4 THE COURT: Overruled.

5 A. Mr. Page advised me that Mr. Azzara was planning to reside  
6 in a homeless shelter in lower Manhattan.

7 Q. How did you react to hearing that?

8 A. I said that's not correct. He needs to report to my office  
9 in White Plains upon his release.

10 Q. What happened next?

11 A. I asked Mr. Page if I'd be able to speak to Mr. Azzara  
12 directly.

13 Q. And how did he respond?

14 A. He said that he would get Mr. Azzara, and that he would  
15 call me back once he was back.

16 Q. What happened after that call?

17 A. I received a call from Mr. Page with Mr. Azzara in his  
18 office. I identified myself to Mr. Azzara who I was.

19 Q. Just so we're clear, who were you speaking to on the phone  
20 at this point?

21 A. Mr. Page put Mr. Azzara on the phone.

22 Q. So Mr. Page called you and then he put Mr. Azzara on the  
23 phone?

24 A. Correct.

25 Q. Where was Mr. Page calling you from?

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Lerman - direct

1 A. The MDC in Brooklyn.

2 Q. At this point was Mr. Azzara still in Bureau of Prisons  
3 custody?

4 A. Yes.

5 Q. So when Mr. Azzara came on the phone, what did you tell  
6 him?

7 A. I identified myself to Mr. Azzara, who I was, I told him I  
8 was his probation officer, and that upon his release I need him  
9 to report to my office in White Plains.

10 Q. How did Mr. Azzara respond?

11 A. He was argumentative. He advised me that he had 72 hours  
12 by statute to report to the Probation Office upon his release.  
13 He advised me that he was not living in Rockland County, that  
14 he was going to be residing at a homeless shelter in lower  
15 Manhattan, and he was going to be reporting to the office in  
16 Manhattan, the Probation Office in Manhattan.

17 Q. How did you respond to Mr. Azzara's statement?

18 A. I said that you are not approved to reside in Manhattan. I  
19 advised him that he was approved to reside in Rockland County  
20 with his father and I'm his assigned probation officer and he  
21 needs to report to my office.

22 Q. How did Mr. Azzara respond?

23 A. He was again argumentative.

24 MR. LEWIS: Objection.

25 THE COURT: Overruled.

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Lerman - direct

1 A. He was again argumentative. I explained to him again I was  
2 his assigned officer. And I asked him that he needs to call me  
3 upon his release from when he's getting out from the MDC so I  
4 know roughly when I could expect him.

5 Q. Just so we're clear, specifically when did you instruct  
6 Mr. Azzara to appear before you, what day did you want him to  
7 show up?

8 A. It was Friday, September 16, 2016.

9 Q. On that call you explicitly told him to report to White  
10 Plains that day?

11 A. Yes, I did.

12 Q. How did the conversation end?

13 A. He was not happy.

14 MR. LEWIS: Objection.

15 THE COURT: You're going to have to explain why you  
16 think that.

17 A. Based on the fact that he was still argumentive about  
18 reporting to the White Plains office.

19 Q. You could tell us specifically what he said if it helps.

20 A. I don't recall his exact words. He was just not happy --

21 MR. LEWIS: Objection.

22 THE COURT: Was there something about what he said or  
23 how he said it that leads you to say he was not happy?

24 A. He kept going back to the fact that he was going to reside  
25 in lower Manhattan in the homeless shelter and his case was

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Lerman - direct

1 going to be supervised out of the Manhattan office and not the  
2 White Plains office.

3 Q. How did the conversation end after he made all of these  
4 statements?

5 A. I told him to call me before he is released and then he  
6 said okay.

7 Q. Did Mr. Azzara call you?

8 A. No, he did not.

9 Q. Had you provided him your phone number during that phone  
10 call?

11 A. Yes, I did.

12 Q. And Mr. Azzara, did he call you that day?

13 A. No, he did not.

14 Q. Did he report to Probation that day?

15 A. No.

16 Q. When did Mr. Azzara report to Probation?

17 A. I reported to Probation on Monday, September 1, 2016.

18 Q. What office did he report to?

19 A. To the Manhattan office.

20 Q. Between the conversation you had with Mr. Azzara on Friday  
21 the 16th and his reporting to Probation on Monday the 19th, did  
22 you attempt to locate Mr. Azzara?

23 A. I did.

24 Q. How did you go about doing that?

25 A. I contacted the shelter where he said he was going to be

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Lerman - direct

1 residing at. And they advised me that he had -- they have no  
2 person by that name.

3 MR. LEWIS: Objection.

4 THE COURT: Overruled. Go ahead.

5 A. And they advised me that they have no person at the shelter  
6 by that name.

7 Q. How many times did you call the shelter?

8 A. Twice.

9 Q. How did you learn that Mr. Azzara had reported to Probation  
10 on Monday, September 19th in Manhattan?

11 A. I received an e-mail from Jennifer Arango who works in the  
12 Manhattan office.

13 Q. Is she an employee of U.S. Probation?

14 A. Yes, she is.

15 Q. How did you react when you learned that Mr. Azzara had  
16 reported to Manhattan against your instructions?

17 A. Well, I was disappointed. I read through the chrono that  
18 she entered and I saw that he now has a cellphone number. I  
19 called the cellphone number and spoke to him directly and again  
20 advised him to report to my office in White Plains, I advised  
21 him to report to my office on September 20, 2016, eleven a.m.

22 Q. When did this call take place?

23 A. This was on Monday, September 19.

24 Q. And did you identify yourself to Mr. Azzara?

25 A. Yes, I did.

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Lerman - direct

1 Q. How did you identify yourself?

2 A. I said I'm his assigned probation officer. I told him my  
3 name. And I told him to report to me in White Plains on  
4 September 20 at eleven a.m.

5 Q. How did Mr. Azzara respond to that instruction?

6 A. Was again argumentative. He told me he reported to the  
7 Manhattan office. And he didn't need to report to White Plains  
8 since he's residing at the homeless shelter in Manhattan.

9 Q. What did you say in response?

10 A. I told him that I was his assigned probation officer and  
11 that he needed to report to my office on September 20, 2016 at  
12 eleven a.m.

13 Q. How did that call end?

14 A. It ended -- I said to Mr. Azzara that if he did not report  
15 to my office in White Plains, that we were going to seek a  
16 warrant for his arrest.

17 Q. How did he respond to that?

18 A. He advised, fine, and he would show up with his attorney.

19 Q. And was that the end of the call?

20 A. Yes.

21 Q. At any point during the call did Mr. Azzara indicate that  
22 he didn't know where the White Plains office was?

23 A. No.

24 Q. At any point during the call did Mr. Azzara indicate that  
25 he was unable to get to the White Plains office?

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Lerman - direct

1 A. No.

2 Q. Did Mr. Azzara report to the White Plains office the next  
3 day?

4 A. No, he did not.

5 Q. What did he do?

6 A. He reported to the Manhattan office again.

7 Q. At some point did you learn where Mr. Azzara had been on  
8 the morning of September 20th before he reported to Manhattan?

9 A. Yes, I did.

10 Q. How did you learn that?

11 A. I received a phone call from his father inquiring what the  
12 status of Mr. Azzara is, he heard that he was arrested and is  
13 back in jail. And I explained to him yes, he was arrested this  
14 morning and he's going to be having a hearing in court this  
15 afternoon.16 Q. What did you learn with respect to where Mr. Azzara had  
17 been before he reported to Probation that morning?18 A. His father told me that Mr. Azzara was actually in his  
19 residence in Rockland County that morning.20 Q. In your experience is it easier to travel to White Plains  
21 or to Manhattan from Rockland County?

22 MR. LEWIS: Objection.

23 THE COURT: He can answer that.

24 A. White Plains.

25 MS COMEY: I have no further questions.

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Lerman - cross

1                   THE COURT: Do you have the document?

2                   Mr. Lewis, I think we have the document you requested.

3                   MS COMEY: Handing a copy to defense counsel and I  
4 have an extra copy to hand up to your Honor.

5                   (Handed to the Court)

6                   CROSS EXAMINATION

7                   BY MR. LEWIS:

8                   Q. Mr. Lerman, good afternoon.

9                   A. Good afternoon, Mr. Lewis.

10                  Q. Mr. Lerman, I'm going to show you what I've marked as  
11 Defendant's Exhibit A which is part of the discovery in this  
12 case marked PA077.

13                  (Handed to the witness)

14                  Q. Is this the document that you referenced earlier indicating  
15 that you had received reflecting that Mr. Azzara was going to  
16 be residing in a men's shelter in New York City?

17                  MS COMEY: Objection, your Honor. I don't believe  
18 that the witness testified that he had ever received the  
19 document reflecting that defendant was going to be in New York  
20 City. I believe he testified that he received a document that  
21 he was going to live with his father in Rockland and that he on  
22 a phone call learned that he was going to live in a men's  
23 shelter.

24                  THE COURT: The record speaks for itself. That is  
25 what I think the testimony was. Ask away, Mr. Lewis.

g9niazzh ag

Lerman - cross

1                   MR. LEWIS: This is the document that the AUSA just  
2 handed to me, at least the front page, in response to the  
3 inquiry as to the document that indicated that he was going to  
4 be living in Rockland County.

5                   MS COMEY: Your Honor, that's not the document that I  
6 just handed to Mr. Lewis.

7                   MR. LEWIS: It isn't?

8                   MS COMEY: No. This is the document.

9                   (Counsel consult)

10                  MR. LEWIS: I'm incorrect.

11 Q. Looking at Defendant's Exhibit A, when was the first time  
12 you saw this document?

13 A. I don't recall seeing this document.

14                  THE COURT: Ever? You've never seen this document  
15 before you were just shown it?

16 A. Correct.

17 Q. Mr. Lerman, when an individual is released from prison are  
18 you familiar with a document known as a release and arrival  
19 form?

20 A. Yes.

21 Q. And that's handed to the probation officer when they  
22 report, correct?

23 A. I'm sorry. If this is handed to the probation officer when  
24 they report?

25 Q. When an individual is released from prison and he's

g9niazzh ag

Lerman - cross

1 directed to appear and report to a probation officer, he needs  
2 to provide them with a notice of release and arrival, isn't  
3 that true?

4 A. Mr. Lewis, I'm not familiar with that. Because when I see  
5 an individual, they usually don't have any paperwork for me.  
6 Maybe that's done in the Manhattan office at the intake  
7 process.

8 MS COMEY: Your Honor, I may be able to clear this up.  
9 The document that Mr. Lewis has handed up is one that we  
10 received from the Bureau of Prisons. We did not receive this  
11 from the Department of Probation.

12 THE COURT: Okay.

13 Q. As part of the intake process, Probation requires some sort  
14 of notification as to where the individual is going to be  
15 residing, correct?

16 MS COMEY: Objection. Foundation.

17 THE COURT: If he knows. Do you know?

18 A. Would you repeat the question.

19 Q. As part of the intake process at the Department of  
20 Probation, is it customary to receive some documentation from  
21 the prison that the man was just released from?

22 A. It's possible. I don't know for sure.

23 Q. You are familiar with the fact that an individual when he  
24 is released from prison has 72 hours to report to a probation  
25 officer? Is that right?

g9niazzh ag

Lerman - cross

1 A. Yes.

2 Q. If in fact he's not in the district, the appropriate  
3 district, to report in the nearest district, isn't that right?

4 A. Possible, yes.

5 Q. Now, have you ever signed -- withdrawn. Is it customary  
6 that when a probationer or a person who is going to be on  
7 supervised release reports for the first time to the Probation  
8 Department that they in fact have the probationer or the person  
9 that is going to be on supervised release go over conditions of  
10 probation and supervised release?

11 A. Yes.

12 Q. Was that done in this particular case?

13 A. I don't know for sure.

14 Q. Have you ever seen conditions of probation and supervised  
15 release in reviewing for today's testimony on this case,  
16 Mr. Azzara's?

17 A. Yes, I did, yes.

18 Q. So it was done, right?

19 A. Yes.

20 Q. And in fact, Government's Exhibit 1 is in fact that  
21 document. And this was prepared on what date, sir?

22 A. September 19, 2016.

23 Q. And it was prepared by whom?

24 A. I can't read the person's name.

25 Q. In reviewing for today you saw this document. Who was it

g9niazzh ag

Lerman - cross

1 that was the intake employee from Probation on September 19,  
2 2016?

3 A. That was Jennifer Arango.

4 Q. And she is a Probation employee?

5 A. Yes.

6 MR. LEWIS: I offer this, your Honor, as Government's  
7 Exhibit 1.

8 MS COMEY: No objection, your Honor.

9 (Government's Exhibit 1 received in evidence)

10 Q. On this document, sir, which is titled conditions of  
11 probation and supervised release, does it indicate in the third  
12 paragraph "the defendant shall report in person to the  
13 Probation Office in the district to which you are released  
14 within 72 hours of release from the custody of the Bureau of  
15 Prisons (supervised release cases only)"?

16 A. Yes.

17 Q. Did Mr. Azzara report to Ms Arango at your Probation Office  
18 located at 500 Pearl Street within 72 hours of his release?

19 A. Yes.

20 Q. Could you look at Exhibit , paragraph 6. This says "the  
21 defendant shall notify the probation officer ten days prior to  
22 any change of residence or employment." Is that right?

23 A. I'm sorry, where are you reading, sir?

24 Q. Paragraph 6 on the same page. First page of Government's  
25 Exhibit 1 which is also discovery Bates stamped 64.

g9niazzh ag

Lerman - cross

1 A. Okay.

2 Q. That's what it says, right? I read it correctly, I read  
3 that sentence correctly?

4 A. Yes.

5 Q. So even the forms that you utilized in the Probation  
6 Department gives him ten-days to notify you of change of  
7 residence or employment, right? Ten-day grace period.

8 A. I don't think that you're saying what it says, Mr. Lewis.

9 Q. It says "the defendant shall notify the probation officer  
10 ten days prior to any change of residence or employment."  
11 Correct?

12 A. Correct.

13 Q. On the second page of this document, that's Mr. Azzara's  
14 signature as the releasee?

15 A. Possibly, yes.

16 Q. And that's Ms Arango's signature underneath it, dated  
17 9/19/16.

18 A. Possibly, yes.

19 Q. And this also refers, does it not, to the judgment and  
20 conviction, where it says -- see J&C?

21 A. Yes.

22 Q. And there was a judgment and conviction in this particular  
23 case, correct?

24 A. Yes.

25 Q. And it called for three years of supervised release upon

g9niazzh ag

Lerman - cross

1 his release from prison, correct?

2 A. Yes.

3 Q. And it also said, indicate again in that J&C that the  
4 probationer or the releasee in this particular instance had 72  
5 hours to report to the Probation Department upon his release  
6 from prison, correct?

7 A. Correct.

8 Q. Going back to Defendant's Exhibit A, when an individual is  
9 released from prison and he has to report to the probation  
10 officer, is there any form or piece of paper that notifies him  
11 where he's supposed to report?

12 A. After our office does the prerelease home inspection of  
13 where he was going to reside, we would send a letter back to  
14 the Bureau of Prisons indicating if that residence was  
15 acceptable or not acceptable. In that letter we usually write  
16 on the bottom that he is to report to the Manhattan office for  
17 intake processing.

18 Q. And that document that you say you sent where it says where  
19 he's to report, do you have a copy of that document?

20 A. I don't, no. I do, in the file, I don't have it with me.

21 MR. LEWIS: I'd ask for a copy of a letter that  
22 indicates that he is to report to the particular address where  
23 he's supposed to report.

24 THE COURT: You want a copy of that letter, whatever  
25 it says, that's what you want to look at?

g9niazzh ag

Lerman - cross

1           MR. LEWIS: Right.

2           THE COURT: Can you get that letter?

3           MS COMEY: I can find out, your Honor.

4           THE COURT: All right.

5           Thank you, Mr. Johnson.

6 Q. Mr. Lerman --

7           THE COURT: Can we just pause for one minute. Are  
8 there other documents in this officer's file that are relevant  
9 to this?

10          MS COMEY: My understanding was that I reviewed every  
11 page the file. I was not aware of these other documents.

12          THE COURT: Do you know where they would be?

13          THE WITNESS: They're scanned in the computer.

14          THE COURT: Officer Lerman, documents that you created  
15 relating to this case, whether they are hard copy or digital  
16 copy, you need to get those to Mr. Lewis. The prosecutor can  
17 look at them first to decide if they're not discoverable. I'd  
18 be hard-pressed to know how they would not be discoverable.

19 A. I believe I submitted all the copies. I can double check,  
20 your Honor.

21          THE COURT: Maybe what we do, Mr. Lewis, you finish  
22 with your inquiry of this witness and maybe we can send him  
23 with Mr. Maimin or somebody to make sure that all the documents  
24 that he created that are in his file or otherwise are in the  
25 file that are relevant to this case you make sure you get.

g9niazzh ag

Lerman - cross

1 Q. On September 16 -- withdrawn. You indicated that you sent  
2 the document to the prison where he was being held, wherever he  
3 may have been, where he was incarcerated indicating that he  
4 would be living in Rockland County, right?

5 A. I did not send the letter myself. Someone from my office,  
6 did.

7 Q. And that was Mr. Bill Pompei?

8 A. I believe so, yes.

9 Q. And Mr. Bill Pompei sent that letter but when you called on  
10 September 16, finding out that he was going to be released, you  
11 found that the discharge papers from MDC indicated that he  
12 would be living at a homeless shelter located at 4551 Avenue D,  
13 New York, New York, 10009, the Bowery Mission Men's Shelter,  
14 right?

15 A. We did not approve that address.

16 Q. I didn't ask that. You learned when you made that phone  
17 call that the MDC discharge papers reflected that he was going  
18 to be living at the Bowery Mission Men's Shelter in Manhattan,  
19 right?

20 A. Yes.

21 Q. And you were concerned about that, right?

22 A. Yes.

23 Q. You didn't want him living in Manhattan, right?

24 A. Correct.

25 Q. So you in fact then contacted MDC to speak to Mr. Page

g9niazzh ag

Lerman - cross

1 first, right?

2 A. I reached out to his case manager before that.

3 Q. And you never heard anything back, correct?

4 A. Well, I did speak with her on one occasion.

5 Q. You were informed, were you not, that MDC wasn't going to  
6 change their paperwork prior to his discharge, right?

7 A. I was not told that.

8 Q. When you spoke with Mr. Page, did you ask him specifically  
9 where is it that his notice of release and arrival or his  
10 discharge papers reflect that he was going to be living?

11 A. He told me he was going to the shelter but I advised him  
12 that we did not approve that address.

13 Q. So Mr. Page, the employee at MDC, told you that the papers  
14 reflect that he was going to be released that day and that he  
15 was going to be living at the Bowery Men's Shelter, correct?

16 A. Yes.

17 Q. And that's when you asked Mr. Page to get Mr. Azzara on the  
18 line, that you wanted to speak to him, correct?

19 A. Correct.

20 Q. Going back to Defendant's Exhibit A, does this reflect,  
21 this document, which is a United States Department of Justice  
22 notice of release and arrival document, does it reflect the  
23 Bowery Mission Men's Shelter, the address and the telephone  
24 number indicated as where Mr. Azzara would be living?

25 A. Yes.

g9niazzh ag

Lerman - cross

1                   MR. LEWIS: I'd offer this, your Honor, at this time  
2 as Defendant's Exhibit A.

3                   MS COMEY: No objection, your Honor.

4                   THE COURT: Received.

5                   (Defendant's Exhibit A received in evidence)

6 Q. So on Defendant's Exhibit A, in the first page of that  
7 document, it shows the sentencing district, correct?

8 A. Yes.

9 Q. And it lists the address as the Daniel Patrick Moynihan  
10 United States Courthouse, 500 Pearl Street, room 698, New York,  
11 New York, 10007, right?

12 A. Yes.

13 Q. What's at room 698?

14 A. That's our office.

15 Q. That's the Probation Department, right?

16 A. Yes.

17 Q. And it's on there because that's the directive to the  
18 inmate as to where he's supposed to go when he gets released,  
19 correct?

20 A. That's not what my understanding is.

21 Q. Could you tell me anywhere on this document, his discharge  
22 papers from MDC, can you tell me anywhere where it indicates  
23 the address up in White Plains?

24 A. No, it does not.

25 Q. In fact, on the last page of the document which is again

g9niazzh ag

Lerman - cross

1 Bates stamped 79, it says in the remarks column, "Mr. Azzara  
2 has been informed he has 72 hours to report to the U.S.  
3 Probation Office upon his release. If any additional  
4 information is needed please contact Ms J. Spencivy, case  
5 manager, at MDC Brooklyn (718) 840-4200." And it's dated with  
6 his signature on August 14, 2006, right?

7 A. Yes.

8 MR. LEWIS: Your Honor, I just realized, one of the  
9 government exhibits is Government's Exhibit 4 which is a part  
10 of Defendant's Exhibit A. So at this time I'd offer  
11 Government's Exhibit 4 which has some additional pages.

12 MS COMEY: No objection, your Honor.

13 (Government's Exhibit 4 received in evidence)

14 Q. Government's Exhibit 4, the last page. That is  
15 specifically Bates stamped 83. This indicates release plan,  
16 right?

17 A. Yes.

18 Q. And it says "inmate Azzara has no release destination.  
19 Inmate Azzara has requested to be placed in a homeless shelter  
20 in New York City so that he can participate in educational  
21 program and locate employment." Do you see that?

22 A. Yes.

23 Q. And this is part of that same group of documents we've  
24 identified as his discharge papers, right, Government's  
25 Exhibit 4?

g9niazzh ag

Lerman - cross

1 A. Yes.

2 Q. Now, you indicated what your responsibilities were as a  
3 United States probation officer. But your responsibilities as  
4 a United States probation officer were actually set forth in --  
5 withdrawn. Your responsibilities as a United States probation  
6 officer are actually codified by Congress in 18 U.S.C. 3655,  
7 aren't they? Are you familiar with that section?

8 A. Can you show me the statute?

9 Q. Sure.

10 (Counsel consult)

11 MR. LEWIS: I withdraw the last question. It appears  
12 that that particular subsection has been repealed and I  
13 apologize for wasting the Court's time.

14 THE COURT: Don't worry about my time.

15 Q. One of the responsibilities that you have as a probation  
16 officer is to try to acclimate a releasee or a probationer back  
17 into society, right?

18 A. Yes.

19 Q. You want to make sure that he has educational  
20 opportunities; you want to make sure that he has employment  
21 opportunities, right?

22 A. Yes.

23 Q. So you want to make sure that you aid them to the extent  
24 that they can improve their conduct and their social condition.  
25 Fair?

g9nizazzh ag

Lerman - cross

1 A. Yes.

2 Q. And you knew from review of the file that Mr. Azzara had  
3 worked in New York City, right?

4 A. I was not aware of that until recently, yes.

5 Q. And there are job opportunities in New York City, are there  
6 not?

7 A. Possibly.

8 Q. And you learned certainly at least on September 16 that his  
9 intention was to live in and work in New York City, right? By  
10 New York City, I mean Manhattan.

11 A. Yes.

12 Q. You also knew, did you not, by acclimating yourself to this  
13 particular probationer or releasee that he in fact had been in  
14 a halfway house in Bronx County for approximately three and a  
15 half months, correct?

16 A. Yes.

17 Q. And as part of his abilities to be in a halfway house, he  
18 could work and he could travel. There was no GPS monitoring,  
19 was there?

20 MS COMEY: Objection.

21 THE COURT: He can answer that, if he can.

22 A. I don't recall.

23 Q. Did you research that?

24 A. He was at that time under the Bureau of Prisons. That  
25 wouldn't be something that Probation was monitoring.

g9nizazzh ag

Lerman - cross

1 Q. Did you ever have a conversation or a meeting with  
2 Mr. Azzara prior to September, the cellphone, excuse me, the  
3 telephone conversation on September 16th of this year?

4 A. No. That was my first conversation.

5 Q. Now, your predecessor in this matter was Mr. Pompei,  
6 correct?

7 A. Yes.

8 Q. And was there a directive that was ever given by Mr. Pompei  
9 to Mr. Azzara that upon his release he was to report down to  
10 500 Pearl Street in Manhattan?

11 A. I don't know.

12 Q. Did you review the file before testifying here today?

13 A. I did.

14 Q. I'd like to show you what's been marked as Defendant's  
15 Exhibit B. It's also Bates stamped 44. May I approach, your  
16 Honor?

17 A. Yes.

18 Q. Is that a letter from Mr. Pompei to United States Prison  
19 Coleman in Florida?

20 A. Yes.

21 Q. And it's sent to case manager Rosinule, correct?

22 A. Yes.

23 Q. And it concerns Paul Azzara, right?

24 A. Correct.

25 Q. And the date on this is November 2, 2015, right?

g9niazzh ag

Lerman - cross

1 A. Yes.

2 MR. LEWIS: I'd offer this, your Honor.

3 MS COMEY: No objection.

4 (Defendant's Exhibit B received in evidence)

5 Q. Could you read to the Court the second paragraph of this  
6 letter dated November 2, 2015 from probation officer Bill  
7 Pompei to Mr. Azzara's case manager?8 A. "Upon release from the Bureau of Prisons, please advise  
9 Mr. Azzara to report to 500 Pearl Street, sixth floor, New  
10 York, New York, 10007 within 72 hours for intake processing by  
11 the Southern District of New York, U.S. Probation Office."12 Q. Now, when you spoke to Mr. Page on the 16th and learned  
13 that he was going to be released to a homeless shelter in New  
14 York City, you were concerned enough to ask to speak directly  
15 to Mr. Azzara for the first time. Right?

16 A. Yes.

17 Q. And that's when you told him that you wanted him to report  
18 that same day to your office.

19 A. Correct.

20 Q. Do you know what time he was released on the 16th?

21 A. I know it was after twelve noon.

22 Q. And what time do you leave your office?

23 A. That day I was there until five.

24 Q. Do you normally leave at four?

25 A. My schedule is flexible.

g9niazzh ag

Lerman - cross

1 Q. I do accept that there's flexibility but is there a  
2 customary hour that you come in and customary hour that you  
3 leave?

4 A. I usually come into the office around, between 8, 8:30.

5 Q. And leave?

6 A. Between four and five.

7 Q. You said that Mr. Azzara was quote unquote argumentative.  
8 Do you remember testifying to that a few minutes ago?

9 A. Yes.

10 Q. Well, did he curse at you?

11 A. No.

12 Q. Did he threaten you in any fashion?

13 A. No.

14 Q. He advocated that he did not have to report today, the day  
15 of his release, that he had 72 hours, right?

16 A. Yes.

17 Q. And he also told you, did he not, that he was supposed to  
18 report to 500 Pearl Street by the letter sent by the Probation  
19 Department directing that, correct?

20 A. Yes.

21 Q. You didn't want that because you were concerned about him  
22 being in Manhattan, right?

23 A. Yes.

24 Q. Why? Who told you to get on that phone and make sure he  
25 doesn't go in Manhattan? Who was it that directed you to do

g9niazzh ag

Lerman - cross

1 that?

2 MS COMEY: Objection, your Honor.

3 THE COURT: Overruled. You can answer.

4 A. I've had conversations with the U.S. Marshals that were  
5 concerned.

6 Q. And those conversations were with Brian O'Sullivan?

7 A. Yes.

8 Q. And did Brian O'Sullivan indicate to you that the United  
9 States Marshal service didn't want him in Manhattan?

10 MS COMEY: Objection, your Honor, relevance.

11 THE COURT: Overruled.

12 A. That's not quite how he phrased it.

13 Q. Didn't he tell you that he did not want Paul Azzara in  
14 Manhattan because that is where Chief U.S. District Court Judge  
15 MacMahon is and the marshals do not want him anywhere near her  
16 Honor? Isn't that how he said it?

17 A. Possibly.

18 Q. And isn't that your entry into your log on September 15th?  
19 Didn't you type that entry into your log?

20 A. Can I see that?

21 Q. Sure.

22 (Handed to the witness)

23 Q. I'm showing you what's been marked as 3502, page 10. Once  
24 again I'm wrong. 3501. Mr. Maimin has my back all the time,  
25 Judge. Number 10. Second paragraph.

g9niazzh ag

Lerman - cross

1 A. Yes.

2 Q. That's what he told you, right?

3 A. Yes.

4 Q. That's the reason why everybody wanted to make sure  
5 Mr. Azzara reported to White Plains, correct?

6 MS COMEY: Objection, your Honor.

7 THE COURT: Sustained. That question is improper.

8 Q. That was your understanding as to why the United States  
9 Marshal and Mr. Johnson wanted you to take some action so that  
10 Mr. Azzara did not report to 500 Pearl Street but in fact  
11 reported to your offices in White Plains, correct?

12 A. Yes.

13 Q. Now, on September 19 did you receive an e-mail from  
14 Jennifer Arango indicating that Mr. Azzara had reported and  
15 that he'd be residing in New York and that he was directed to  
16 appear to come back to 500 Pearl Street to be assigned a  
17 probation officer on October 4, 2016?

18 A. I don't know what she said to him.

19 Q. Didn't you speak with her?

20 A. I received her e-mail.

21 Q. Did you ever phone her up and talk to her?

22 A. I spoke with her, yes.

23 Q. Would it be fair to say that in that conversation you told  
24 her, no, I don't want him reporting to New York, I want to have  
25 him reporting to White Plains, right?

g9niazzh ag

Lerman - cross

1 A. Well, I was his assigned officer. And he was supposed to  
2 report to White Plains office.

3 Q. Did Ms Arango when she spoke to you tell you that she had  
4 given him documentation on September, Monday September 19th to  
5 return to the Probation Department on October 4, 2016 between  
6 8:30 a.m. and 3:00 p.m. where he would receive a probation  
7 officer who would be the duty officer? Didn't she tell you  
8 that?

9 A. That was in her chronos, yes. She didn't tell me that over  
10 the phone.

11 Q. And that's the information she told Mr. Azzara, right?

12 A. I don't know.

13 MS COMEY: Objection.

14 THE COURT: Sustained.

15 Q. I'd show you what's been marked as Defendant's Exhibit C.

16 (Handed to the witness)

17 Q. Do you see that? That's the document that was generated by  
18 the United States Probation Office, correct?

19 A. It appears to be, yes.

20 MR. LEWIS: I'd offer that as Defendant's Exhibit C.

21 MS COMEY: No objection, your Honor.

22 THE COURT: Received.

23 (Defendant's Exhibit C received in evidence)

24 Q. Now that document specifically says, does it not, that  
25 Mr. Azzara is to report back to 500 Pearl Street on, what was

g9niazzh ag

Lerman - cross

1 it, October 4th or October 5th? I forget.

2 A. This document says October 4th.

3 Q. And then it says probation officer and underneath it is  
4 written the word what?

5 A. Duty officer.

6 Q. In your stay as a probation officer since you received your  
7 appointment in January 2016, have you ever served as a duty  
8 officer?

9 A. No, I have not.

10 Q. Do you know what a duty officer is? Can you tell the  
11 Court.

12 A. I don't know offhand, no.

13 Q. Mr. Lerman, you don't know what a duty officer in the  
14 United States Probation Office is?

15 A. I don't know what their function is in the Manhattan  
16 office, no.

17 Q. Is there a duty officer up here in White Plains?

18 A. No.

19 Q. So the first time that you've ever heard of the United  
20 States Probation duty officer is as you're testifying here  
21 today in this courtroom, is that your testimony?

22 A. No. I heard of the term.

23 Q. Okay. And what did you understand the term to be?

24 A. I mean I can take a guess.

25 THE COURT: We don't want guesses.

g9niazzh ag

Lerman - cross

1 Q. When you heard the term before, in what context was it that  
2 you heard it?

3 A. That there are officers who have no assigned duty days.

4 Q. For what purpose?

5 A. Well, I don't have that assignment.

6 Q. When you heard in the conversation or the context that  
7 there are officers who have assigned duty days, what did you  
8 understand that to mean?

9 A. Like I said, I can take a guess. But that's not what --

10 Q. You can only answer that question by guessing, is that your  
11 testimony?

12 A. Considering I don't have that as one of my assignments...

13 THE COURT: If you want him to guess, go ahead, ask  
14 him. Do you want him to guess?

15 Q. What do you guess that means?

16 A. That that officer may handle issues that come up on that  
17 day.

18 Q. Okay. So what would be the purpose of writing under the  
19 word probation the word duty officer by Ms Arango on that date?

20 MS COMEY: Objection, your Honor.

21 THE COURT: Given his testimony, I don't think you've  
22 laid a foundation that he's in a position to know.

23 Q. That document clearly indicates that Mr. Azzara is to  
24 report to 500 Pearl Street and see the Probation duty officer  
25 on October 4th, correct?

g9niazzh ag

Lerman - cross

1 A. According to this document, yes.

2 Q. Were you aware that Ms Arango had told him to report to 500  
3 Pearl Street on October 4 on September 16?

4 A. On September 16?

5 Q. On September 19th, Monday, September 19th.

6 A. I understood that after I spoke to Mr. Azzara, after I  
7 received Jennifer Arango's e-mail.

8 Q. After you received Ms Jennifer Arango's e-mail you  
9 understood clearly that she had told him to return to 500 Pearl  
10 on October 4, correct?

11 A. Yes.

12 Q. And you understood clearly that he was going to be living  
13 in New York City and that's why they were going to reassign a  
14 probation officer, correct? Yes or no.

15 A. Yes.

16 Q. And they then, in fact, contacted Mr. Azzara, right?

17 A. I contacted Mr. Azzara, yes.

18 Q. You telephoned him?

19 A. Yes.

20 Q. You didn't have his cell number, right?

21 A. I did.

22 Q. You got it from somebody, correct?

23 A. Correct.

24 Q. You got it from Jennifer, right?

25 A. Correct.

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Lerman - cross

1 Q. She gave it to you, correct?

2 A. It was in the chronos, yes.

3 Q. You asked for it, did you not?

4 A. No.

5 Q. And you called Azzara, right?

6 A. Yes.

7 Q. And at that point in time you told him that you wanted him  
8 to come to White Plains.

9 A. Correct.

10 Q. And at that point in time, Mr. Azzara in fact indicated:

11 But I've been directed to appear at 500 Pearl Street and I  
12 don't have to go back until October 4th, correct?

13 A. Yes.

14 Q. And that was based upon Defendant's Exhibit C that had been  
15 given to him that same morning. True or not true?

16 MS COMEY: Objection.

17 THE COURT: Sustained. He's not in a position to  
18 mindread like that.

19 Q. Did you ask Mr. Azzara what was the basis for him saying  
20 that to you?

21 A. Well, I know he reported to the Manhattan office.

22 Q. Now, did you tell him that you wanted him to come to White  
23 Plains on the 16th, excuse me, on the 20th, Tuesday the 20th,  
24 the next day?

25 A. Yes.

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Lerman - cross

1 Q. And after that conversation, that cellphone conversation  
2 when you called his cellphone, did you receive a copy of an  
3 e-mail that he had sent to Jennifer Arango at approximately  
4 6:59 in the morning?

5 A. That e-mail was forwarded to me, yes.

6 MR. LEWIS: I believe I'm up to Exhibit D. With your  
7 Honor's permission, I'd hand up to the witness a two-page  
8 document which is 3502, pages 7 and 8 are now marked as  
9 Defendant's Exhibit D.

10 THE COURT: Okay. Go ahead.

11 Q. Is that the e-mail that you received from Jennifer Arango  
12 at 9:55 on the morning of September 20th?

13 A. Yes.

14 MR. LEWIS: I'd offer this, your Honor, as Defendant's  
15 Exhibit D.

16 MS COMEY: No objection.

17 (Defendant's Exhibit D received in evidence)

18 Q. So your colleague, an employee of the Probation Department,  
19 writes to you at 9:55 that morning and says: "Good morning,  
20 guys. Just a heads-up. Below is the e-mail I received from  
21 Azzara. I did advise him that Jason will be contacting him  
22 based on his unstable living situation. As you can see, he  
23 keeps saying that he does not want to live in Rockland. I'm  
24 not sure if he will show up at New York City or White Plains  
25 today around eleven a.m. His photo has been updated to PAX."

g9niazzh ag

Lerman - cross

1 I will keep you updated if he does report, thanks. And  
2 attached thereto is an e-mail from Mr. Azzara, correct?

3 A. It appears to be, yes.

4 Q. And it reads, dear Mr. --

5 THE COURT: Do we need to read it? It's in the record  
6 and I have it and I've read it.

7 Q. So that particular e-mail you received and then in response  
8 to it, what do you do?

9 A. At that time I believe I forwarded this e-mail to my  
10 supervisor.

11 Q. That's Mr. Johnson?

12 A. Correct.

13 Q. Mr. Johnson, did he give you any directions as far as  
14 filing papers with the court, as far as a summons to change  
15 Mr. Azzara's conditions of supervised release?

16 A. We were previously looking to modify his conditions, yes.

17 Q. And that was before he was even released from jail.

18 A. Correct.

19 Q. You wanted to modify his conditions based upon the  
20 conversations that had occurred with the United States Marshals  
21 Service, right?

22 A. No.

23 Q. You didn't want to -- well, withdrawn. One of the  
24 conditions that you want to modify was that he was not allowed  
25 in Manhattan, correct?

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Lerman - cross

1 A. Yes.

2 Q. And the reason why you wanted to modify his conditions to  
3 keep him out of Manhattan was because that's where the Chief  
4 Judge is, right?

5 A. That was a concern, yes.

6 Q. Did there come a time later that day where another e-mail  
7 was sent by Mr. Azzara to Ms Arango?

8 A. I only saw this e-mail.

9 Q. I'd like to show you what's been marked as Government's  
10 Exhibit 3. Tell me when you finished looking at that.

11 (Pause)

12 A. Okay.

13 Q. You've seen that before.

14 A. No, I haven't.

15 Q. Is it your testimony that you were never aware that  
16 Mr. Azzara sent a second e-mail to Ms Arango on September 20,  
17 2016?

18 A. Yes. I did not receive this e-mail.

19 MR. LEWIS: I'd offer this, your Honor, as Defendant's  
20 Exhibit, excuse me, as Government's Exhibit 3 I believe it's  
21 marked.

22 MS COMEY: We have no objection.

23 (Government's Exhibit 3 received in evidence)

24 Q. That particular e-mail indicates that Mr. Azzara wanted to  
25 find out from Ms Arango who your supervisor was, right?

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Lerman - redirect

1 MS COMEY: Objection, your Honor.

2 THE COURT: It speaks for itself. Plus he says he  
3 never saw it before.

4 MR. LEWIS: May I have a moment.

5 THE COURT: Yes.

6 (Counsel consults with his client)

7 MR. LEWIS: No further questions, your Honor.

8 REDIRECT EXAMINATION

9 BY MS COMEY:

10 Q. Officer Lerman, do you remember being asked about a duty  
11 officer on cross-examination?

12 A. Yes.

13 Q. Is this generally the practice of the Probation Office to  
14 just assign a generic duty officer without a name to somebody  
15 on supervised release?

16 MR. LEWIS: Objection.

17 THE COURT: Based on his experience, he can answer it.  
18 I take that back. He said he didn't know what a duty officer  
19 was.

20 Q. Have you in your experience as a probation officer ever  
21 heard of a duty officer generally being assigned to supervise  
22 somebody who is on supervised release?

23 MR. LEWIS: Judge, he indicated he didn't know what a  
24 duty officer is.

25 THE COURT: He did say that. I don't know how he

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Lerman - redirect

1 could answer that question.

2 Q. In your experience as a probation officer, have you ever  
3 known anyone other than a specifically named probation officer  
4 to supervise someone on supervised release?

5 A. I don't know.

6 Q. Have you ever heard of that happening?

7 MR. LEWIS: Objection, asked and answered.

8 THE COURT: No, he can answer it.

9 A. It may happen. I just don't know.

10 THE COURT: Do you have any personal knowledge of it  
11 ever happening? Not whether or not it may happen. Do you have  
12 any knowledge based on your experience that that's happened?

13 A. No.

14 Q. I'd like to turn to Government's Exhibit 1. Do you still  
15 have that in front of you?

16 A. Yes.

17 Q. According to this document, on what day did Mr. Azzara's  
18 supervised release begin?

19 A. September 16, 2016.

20 Q. So does that mean that the conditions in this document  
21 apply to him on September 16, 2016?

22 A. Yes.

23 Q. I'd like to take a look at condition number 3. Would you  
24 read that aloud, please.

25 A. "The defendant shall answer truthfully ly all inquiries by

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Lerman - redirect

2 the probation officer and follow the instructions of the  
3 probation officer."

4 Q. What's your understanding of what is required under that  
5 condition?

6 A. That the defendant cannot lie to a probation officer and  
7 should follow instructions that are given to him.

8 Q. You were asked about condition number 6 as well on  
9 cross-examination. What's your understanding of what condition  
10 number 6 requires?

11 A. Okay. He's supposed to give us ten days notice prior to  
12 him moving to an address.

13 (Continued on next page)

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